

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-2099-PST-E TCEQ ID: RN101555738 CASE NO.: 31887
RESPONDENT NAME: DON PRESSLY JR.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 4009 Lee Street, Greenville, Hunt County</p> <p>TYPE OF OPERATION: Temporary out-of-service petroleum storage tank facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 10, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="padding-left: 20px;">TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="padding-left: 20px;">TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0555</p> <p style="padding-left: 20px;">TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903</p> <p style="padding-left: 20px;">Respondent: Mr. Don Pressly Jr., 2810 Walnut Street, Greenville, Texas 75401</p> <p style="padding-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY
 2008 MAY 15 PM 4:24
 CHIEF CLERKS OFFICE

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: May 17, 2006 and November 16, 2006</p> <p>Date of NOV/NOE Relating to this Case: May 30, 2006 (NOV) and December 1, 2006 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on March 28, 2007. The Respondent filed an answer to the EDPRP on April 20, 2007. The Respondent signed an Agreed Order on December 10, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <p>Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p>Initial Calculated Penalty: \$10,500</p> <p>Total Assessed: \$8,400</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$245/\$8,155</p> <p>The Respondent has paid \$245 of the administrative penalty. The remaining amount of \$8,155 of the administrative penalty shall be payable in 35 monthly payments of \$233 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>*Explanation of Initial Calculated Penalty Reduction:</p> <p>This case was settled for less than the penalty amount calculated after considering the risks of litigation.</p>	<p>Corrective Action Taken</p> <p>The Executive Director recognizes that the Respondent removed the underground storage tank ("UST") system from the facility on April 12, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

TCEQ

DATES	Assigned	4-Dec-2006	Screening	6-Dec-2006	EPA Due	
	PCW	17-Sep-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Don Pressly Jr.		
Reg. Ent. Ref. No.	RN101555738		
Facility/Site Region	4- Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	31887	No. of Violations	1	
Docket No.	2006-2099-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya	
Multi-Media		EC's Team	EnforcementTeam 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$500
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Notes Enhancement due to one NOV with same or similar violations.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The respondent does not meet the good faith criteria.

Total EB Amounts	\$6,001	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$10,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$10,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,500
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

This is not an expedited case.

PAYABLE PENALTY	\$10,500
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Screening Date 6-Dec-2006

Docket No. 2006-2099-PST-E

PCW

Respondent Don Pressly Jr.

Policy Revision 2 (September 2002)

Case ID No. 31887

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN101555738

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement due to one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 6-Dec-2006

Docket No. 2006-2099-PST-E

PCW

Respondent Don Pressly Jr.

Policy Revision 2 (September 2002)

Case ID No. 31887

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN101555738

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.47(a)(2)

Violation Description

Failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4

120 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Four monthly events (one per UST) are recommended from the November 16, 2006 investigation date to the December 6, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6,001

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

Economic Benefit Worksheet

Respondent Don Pressly Jr.
Case ID No. 31887
Reg. Ent. Reference No. RN101555738
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	22-Dec-1998	17-Jul-2007	8.6	\$286	\$5,715	\$6,001
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date the respondent was required to upgrade the UST system. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$6,001

Compliance History

Customer/Respondent/Owner-Operator:	CN603040437	PRESSLY, DON JR	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN101555738	DON PRESSLY JR	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	2525	
Location:	4009 LEE ST, GREENVILLE, TX, 75401	Rating Date: September 01 06	Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	December 05, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 05, 2001 to December 05, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rajesh Acharya Phone: (512) 239-0577

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 11/30/2006 (531400)
 - 2 05/30/2006 (466782)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/30/2006 (466782)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Description: Failure to ensure that all regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(G)

Description: Failure to ensure that the UST system cannot be accessed by unauthorized personnel.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
- F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DON PRESSLY JR.;
RN101555738**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2006-2099-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Don Pressly Jr. ("Mr. Pressly") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Pressly, appear before the Commission and together stipulate that:

1. At the time of the violation, Mr. Pressly owned a temporarily out-of-service petroleum storage tank facility located at 4009 Lee Street, Greenville, Hunt County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Pressly agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Pressly is subject to the Commission's jurisdiction.
4. Mr. Pressly received notice of the violations alleged in Section II ("Allegations") on or about June 5, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Pressly of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eight thousand four hundred dollars (\$8,400.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Pressly has paid two hundred forty-five dollars (\$245.00) of the

administrative penalty. The remaining amount of eight thousand one hundred fifty-five dollars (\$8,155.00) of the administrative penalty shall be payable in thirty-five monthly payments of two hundred thirty-three dollars (\$233.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Pressly fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Pressly to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Pressly to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Pressly have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Pressly removed the underground storage tank ("UST") system from the Facility on April 12, 2007, in response to this enforcement action.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Pressly has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Mr. Pressly is alleged to have violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

III. DENIALS

Mr. Pressly generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Pressly pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Pressly's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Don Pressly Jr., Docket No. 2006-2099-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

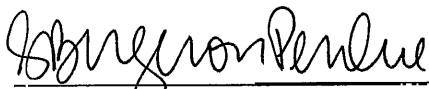
2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Pressly. Mr. Pressly is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Pressly in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Pressly, or three days after the date on which the Commission mails notice of the Order to Mr. Pressly, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Don Pressly Jr.
DOCKET NO. 2006-2099-PST-E
Page 4

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/27/08

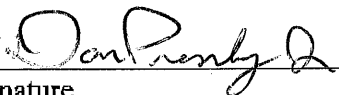
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

12/10/07

Date

Don Pressly Jr.

Name (Printed or typed)
Authorized representative of
Don Pressly Jr.

owner

Title